IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 89-M-2104

CONRAD JOHN HUSMAN,

Plaintiff,

v.

CLIMAX MOLYBDENUM COMPANY, a Delaware corporation, CLIMAX NON-CONTRIBUTORY RETIREMENT INCOME PLAN, BARBARA RANDALL, Administrator,

Defendants.

MEMORANDUM OPINION AND ORDER

MATSCH, Judge

This is an action under ERISA, 29 U.S.C. §1132(a)(1)(B) by a participant in a qualified pension plan seeking payment of disability retirement benefits retroactively to a date nine years before the filing of an application for those benefits. The defendants have moved for a summary judgment of dismissal. There has been full discovery in the case and oral argument on the motion.

A stipulated pretrial order was entered

by Magistrate Richard B. Harvey on October 4, 1990. The factual stipulations contained in that pretrial order are incorporated by this reference.

The plaintiff began employment with Climax on March 28, 1962. He last worked on April 28, 1977, when he sustained an injury on the job. Husman was terminated from his employment at the expiration of his medical layoff on April 24, 1981. Throughout his employment, the plaintiff was member of the union with which Climax had a series of collective bargaining agreements applicable to Husman during his employment. In April, 1986, the plaintiff submitted completed applications for total and permanent disability benefits to Climax. The form used for that purpose is a claim form from Metropolitan Life Insurance Company, the company providing total and permanent disability benefits under a life insurance policy. Metropolitan received the

plaintiff's application for total and permanent disability benefits from Climax on October 30, 1986. On September 10, 1987, Metropolitan approved the payment of those benefits retroactively to the date of receipt of the application, October 30, 1986. Barbara Randall, the plan administrator, determined that Husman was entitled to disability retirement benefits by a letter to him, dated October 5, 1987, and requested that he complete a request for payment information form. The defendants' position is that the disability retirement benefits under the pension plan should begin October 30, 1986, the same date used by Metropolitan for disability benefits under the insurance policy.

The plaintiff asserts that the disability retirement benefits should begin at the time that he was injured in 1977. For purposes of the present motion, the defendants concede that the plaintiff was

disabled within the meaning of the 1980 pension plan and all predecessor plans as early as 1977. Therefore, the question presented is limited to whether the plan administrator acted unreasonably in limiting the disability retirement benefits to the filing of the application for those benefits jointly with the application for the total disability benefits under the Metropolitan insurance policy.

The parties are agreed that the standard of review is whether the plan administrator's determination was arbitrary and unreasonable. The pension plan in effect at the time of the termination of the plaintiff's employment is the supplemental agreement amended and restated as of July 15, 1980, a copy of which is Exhibit A to the defendants' motion for summary judgment. Under Article VIII, eligibility for disability retirement is established under Section 5. The amount of such retirement

benefits shall be calculated in accordance with Article IX, Section 4. Article XII, Section 2(a) reads as follows:

> Disability Retirement Benefits shall be payable to en eligible member, who has applied therefore, commencing as of the first day of the month after a determination of his Total and Permanent Disability has been made by the Administrator, as provided by this Article and Article VII, Section 5, and shall be payable as of the first day of each month thereafter during the life of such Member, and, if applicable, his spouse, except as otherwise provided under Subsection (b) below; provided, however, that no Benefit shall be payable in respect of a period in which such Member is in receipt of Weekly Accident and Sickness Insurance benefits under the Group Insurance Program.

The practice followed by Ms. Randall,

as plan administrator of the pension plan, was to accept the determination of Metropolitan Life Insurance Company concerning disability since the definitions of disability under the insurance policy and the retirement plan are considered to be the same. Thus, she simply followed the action of Metropolitan in determining that Mr. Husman was eligible on October 30, 1986.

The plaintiff's claims of unreasonableness are, in essence, that the plaintiff should be awarded retirement benefits when he first became disabled, regardless of the timing of his application. Although, at first blush, that contention seems frivolous, the plaintiff points out that in December, 1979, an arbitrator on a labor grievance ruled that the plaintiff was not able to work and was entitled to be placed on a medical layoff status with 52 weeks of accident and sickness benefits to begin as of May 3, 1977. Additionally, an

administrative law judge of the Social Security Administration found the plaintiff disabled within the meaning of the Social Security Act as of April 29, 1977, and a Colorado State Workman's Compensation Hearing Officer found the plaintiff to be temporarily totally disabled as of June 22, 1983. Thus, these disability determinations should have been known to the defendants. The plaintiff confuses the issue. As previously stated, the defendants admit on this motion that the plaintiff was disabled within the meaning of the plan as early as April, 1977. The refusal to grant benefits retroactively to that date is rooted in the determination that an application for such benefits is a necessary condition to their receipt under the language quoted above. That is a reasonable interpretation of the plan.

The plaintiff also asserts that the plan administrator was unreasonable in

denying the plaintiff a hearing. Again, what purpose would be served by such a hearing? The facts concerning the timing of the application are admitted. The reason for the provision for a hearing under the plan is a determination of disability but that is irrelevant in this case.

The plaintiff also contends that his rights vested under earlier versions of the pension plan which had different language relating to a definition of disability. In this Court's view, there is no meaningful difference in the changes in language and the same result would obtain even if the plan administrator used an earlier version of the pension plan.

Finally, the plaintiff contends that the plan administrator has acted improperly in delegating the determination of disability benefits to Metropolitan Life Insurance Company. The eligibility for benefits under the insurance policy and the

pension plan are substantially the same and in this Court's view the practice of using the same application for both types of benefits is a reasonable administrative decision.

For these stated reasons, it is this Court's view that the plaintiff has failed to show that the defendants have acted unreasonably in determining that his disability retirement benefits should begin as of the date that his application for such benefits was filed with Metropolitan Life Insurance Company.

Accordingly, it is

ORDERED that the defendants' motion for summary judgment is granted and the plaintiff's claims are dismissed with prejudice. The Clerk shall enter judgment accordingly.

Dated: August 14, 1992.

BY THE COURT:

Richard P. Matsch, Judge